

Not published

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

NO. 14-2968

EVERETT EMERSON,

APPELLANT,

V.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS,

APPELLEE.

ORDER

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

Veteran Everett Emerson has appealed through counsel a May 12, 2014, Board of Veterans' Appeals decision that, inter alia, denied an effective date earlier than August 23, 2010, for the grant of service connection and an initial 30% evaluation for post-traumatic stress disorder. On November 30, 2015, the Court referred this case to a panel for resolution, with oral argument scheduled for March 8, 2016. On February 5, 2016, Mr. Emerson filed an unopposed motion seeking clarification of the issue for which panel consideration and oral argument had been ordered.

The parties are hereby advised that the general issue raised in the briefing, for which the Court has ordered panel consideration and oral argument, is the applicability of 38 C.F.R. § 3.156(c) to the facts of this case. Thus, the parties should be prepared to discuss all questions related thereto, including, but not limited to, the following:

1. Whether and in what manner the admonition under § 3.156(c)(1)(i) that VA "will reconsider the claim" applies where, as here, the claim for service connection, although originally denied in 2003, was later granted in 2011, but before VA associated with the claims file relevant service department records.
2. Assuming § 3.156(c)(1)(i) applies and VA must "reconsider the claim," how, in the present case, would the requirement under § 3.156(c)(3) for a potential earlier effective date be met, i.e., the requirement that "[a]n award [be] made all or in part on the records identified by paragraph (c)(1)"?

Accordingly, the parties should be prepared to discuss and address during oral argument these and related questions.

It is so ORDERED.

DATED: February 26, 2016

PER CURIAM

Copies to:

Sandra E. Booth, Esq.

VA General Counsel (027)